IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17273 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KJ JOSHI - Petitioner(s)

Versus

ADVOCATE GENERAL - Respondent(s)

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Appearance :

MR DEVESH A BHATT for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/12/2005

ORAL JUDGMENT

1.This petition is called out twice. On both the occasions, the learned advocate appearing on behalf of the petitioner is absent. This matter is already adjourned for 9 times. Under the circumstances, this

Court has no any other alternative but to decide and dispose of the present Special Civil Application on merits ex-parte.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the communication/order dated 5.2.2005 by the learned Advocate General, State of Gujarat in Criminal Contempt Application No.1 of 2005 by which the learned Advocate General has declined to grant consent for initiation of Contempt proceedings under Section 15(1)(b) of the Contempt of Courts Act.

3. It appears from the record that the petitioner has preferred Special Civil Application No.9570 of 1998 before this Court for certain retirement benefits and in the said Special Civil Application, the Civil Application No.5007 of 2004 was filed by the petitioner and while disposing of the said Civil Application, the learned Single Judge of this Court passed the order that ***"Parties are directed to complete the pleadings on or before 30th July, 2004. Thereafter, the matter be fixed for hearing on 3rd August, 2004"*** . It is the

contention on behalf of the petitioner that as the affidavit-in-reply was not filed on or before 30th July, 2004 as directed by this Court, there is a criminal contempt committed by the respondents of Special Civil Application No.9570 of 1998 and thereafter, the petitioner has submitted an application to the learned Advocate General, State of Gujarat, being Criminal Contempt Application No.1 of 2005 and considering the order passed by the learned Single Judge of this Court dated 2nd July, 2004, the learned Advocate General, State of Gujarat, was of the opinion that non-compliance of the above direction cannot amount to criminal contempt under the provisions of the Contempt of Courts Act and it is for the applicant to take appropriate steps for hearing of his petition as per the advice of his lawyer in absence of non-filing of the affidavit-in-reply by the Bank. The said decision and/or communication of the learned Advocate General declining to grant consent under Section 15(1)(b) of the Contempt of the Courts Act cannot be said to be illegal and/or contrary to the provisions of the Contempt of Courts Act. On the facts of the case, the learned Advocate General is justified in declining to grant consent under Section 15(1)(b) of the Contempt of

Court Act. Even otherwise, even in the present Special Civil Application, the petitioner has not joined those persons and/or authorities against whom the petitioner wanted to initiate the proceedings under the Contempt of Court Act.

4. Under the circumstances and for the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.